

BEFORE, THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN E. AND JOYCE L. SCHWANER)

For Appellants: L. H. Penney & Company
Certified Public Accountants

For Respondent: Crawford H. Thomas
Chief Counsel

Peter S. Pierson
Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John E. and Joyce L. Schwaner against a proposed assessment of additional personal income tax in the amount of \$774.19 for the year 1963.

The sole issue presented by this appeal is whether a claimed deduction of \$12,694.32 was an abandonment loss within the purview of section 17,206 of the Revenue and Taxation Code.

Appellants are the sole stockholders of Sacramento Sky Ranch, Inc., and from 1952 until its sale in 1963 rented certain real property to that corporation for use in the latter's aircraft service, repairs and parts business. Upon the land were certain improvements, including a shop, hangars and a classroom. By 1963 these improvements no longer fully served the needs of the corporation's business. About this time the owner of adjacent land, wishing to extend his subdivision operations, expressed an interest in purchasing the property in question. The property was sold to this adjacent land owner on July 19, 1963, for \$867,676, with appellants electing to report the gain on the installment method. The corporation relocated at the Sacramento Municipal Airport,

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With respect to the aforementioned improvements, the contract of sale specified in part:

Seller shall deliver possession of said property upon closing of escrow free and clear of any claims of tenants thereon, Seller shall have the right at his option to remove all or any portion of the buildings and other improvements on said property; in the event that seller elects to remove said buildings or improvements he shall do so at his sole cost and expense,.

The option was not exercised. Subsequently, the purchaser razed the improvements.

On their 1963 return appellants claimed an abandonment loss in the amount of \$12,694.32, the unrecovered basis of the improvements upon the land, Respondent Franchise Tax Board concluded that there was not an abandonment because the improvements were transferred to the purchaser along with the land, Based on this conclusion respondent disallowed the deduction and included the amount claimed as part of the basis of the property sold.

Appellants contend that there was an abandonment of the improvements, and that inasmuch as the improvements were used-in connection with appellants' rental business the loss was deductible in full as an ordinary loss.

Improvements are not abandoned where they are transferred to the purchaser along with the land, (Simmons Mill & Lumber-Co., T.C. Memo., Dkt. No. 93414, July 5, 1963.) 'In Simmons the court said:

We further hold that petitioner did not sustain an ordinary abandonment loss for those relevant assets which passed to National with the land. Petitioner had the legal right to remove these improvements or to leave them on the property, where they would pass with the land to National,

* * *

It is clear that the petitioner has not sustained his burden of proving that the transfer of ths improvements occurred independently of the sale of the land, Indeed, the transfer was solely due to the sale of said land,

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Here, as in the Simmons case, the seller elected not to remove certain improvements and they passed to the purchaser along with the land, Under these circumstances, the improvements were not abandoned,

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of John E. and Joyce L. Schwaner against a proposed assessment of additional personal income tax in the amount of \$774.19 for the year 1963, be and the same is hereby sustained.

Done at Sacramento, , California, ^{the} 6th day of November, 1967, by the State Board of Equalization.

Paul R. Leake, Chairman
John W. Lynch, Member
John W. Lynch, Member
Billie K. Lee, Member
 , Member

ATTEST: , Secretary